

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

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U.S. BANKRUPTCY COURT, SONY

UNITED STATES BANKRUPTCY COURT

BANKRUPTCY CASE No. 08-1789 (BRL)

OPPOSITION TO DETERMINATION OF CLAIM

ON BEHALF OF ALEXANDRA STORY

Alexandra Story (hereafter "Alexandra") opposes the Trustee's Denial of her Claim based on the erroneous finding that the funds withdrawn from the Account in question¹ were withdrawn by her or paid to or for her account or benefit. Alexandra reminds the Trustee that he earlier recognized her claim of hardship.²

Alexandra is a victim of Bernard L. Madoff and Bernard L. Madoff Investment Securities LLC ("BLMIS") as well as of her husband Kent Kilroe (hereafter "Kilroe") with regard

¹ See Notice of Trustee's Determination of Claim annexed hereto as Exhibit A.

² See hardship application and Trustee's response, Exhibit B hereto.

to the Account. As such she is due compensation for the loss from the Trustee of her invested funds which were intended as a part of her inheritance from her parents.

Originally, the Account was created by Alexandra's parents for Alexandra's benefit by deposit of their investments from their own life savings to the Account. The Account was held in a trust for Alexandra's sole benefit. Alexandra's parents did not withdraw any funds from the Account; but for many years they used their own separate assets to pay local, state, and federal income taxes on reported (but now declared "illusory") profits to the Account by BMLIS. Later Alexandra paid from her own funds the local, state, and federal income taxes on the "illusory" profits.

The Trust terminated in 2003 about two years after Alexandra married Kilroe. The Account was renamed as a joint account of Alexandra and Kilroe to allow Kilroe to assume fiduciary responsibility to manage Alexandra's funds in the Account on Alexandra's behalf as had formerly been done under the trust.

It has been discovered in the pending divorce action between Alexandra and Kilroe³ that Kilroe immediately and persistently violated his fiduciary duty to Alexandra by signing Alexandra's name (without her knowledge or consent) on

³ Story v. Kilroe, Supreme Court, State of New York, County of New York, Index No. 350046/09.

drafts against the Account and he used the funds withdrawn from the Account in the amount of about \$1,448,148 generally for his own benefit.⁴ Kilroe enriched himself to Alexandra's detriment but did not himself contribute economically to the marriage or to the support of the parties' two young children Declan and Bowie. BLMIS is responsible for accepting Kilroe's unauthorized use of Alexandra's name on the drafts.

Thus, it was Kilroe, and not Alexandra, who drew out of the Account most of what the Trustee has found to be "illusory" funds in excess of the true deposits that Alexandra's parents gave to her as a portion of her inheritance from them. Kilroe's withdrawals have now exposed Alexandra not only to the Trustee's present denial of Alexandra's Claim to the true deposits to the Account but also to possible further adverse actions by the Trustee regarding the excess funds withdrawn by Kilroe.

If Kilroe had not drawn out the \$1,448,481 from the Account, Alexandra would still have the benefit of the true deposits that her parents had long before given to her in trust, the sum of which was in excess of the amount of Alexandra's Claim in this proceeding, as the Trustee finds in the Determination of the Claim.

⁴ Annexed hereto as Exhibit C is a list of the drafts by Kilroe of checks on which Kilroe forged Alexandra's name that have been discovered so far.

In addition, Alexandra and her parents have been and they are financially injured by having dutifully paid local, state, and federal income taxes on the funds in the Account that were deemed to be taxable profits but that have been designated "illusory" by the Trustee throughout the period of the trust and through 2008.

Alexandra has been and she is financially devastated and victimized by the acts of BLMIS and Kilroe. She is in fragile health, having recently survived thyroid cancer surgery, and she has minimal earned income as a school teacher. She is at this time solely responsible for the support of her two young children. Alexandra's elderly parents, having been devastated by their own losses due to the fraud of BLMIS in their own accounts, are in reduced circumstances and are minimally able to assist Alexandra and her children. Kilroe abandoned Alexandra in 2008 shortly before the BLMIS fraud came to light. Kilroe has to date disregarded court orders of child support. Kilroe is devoting his attention to his own separate business and personal interests.

Given the hardship that Alexandra faces and her innocence of the excess drafts on the Account, her lack of benefit from the drafts by Kilroe, and her expenses for income taxes on the "illusory" profits on the Account, the Trustee may and should in the exercise of discretion sever Alexandra's

own Claim from any claim attributable to Kilroe, allow Alexandra's Hardship Application, and reverse the denial of Alexandra's Claim separately from action on any claim that Kilroe may himself assert.

Dated: New York, New York
November 13, 2009

Respectfully submitted,



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